



香港牙醫管理委員會
The Dental Council of Hong Kong

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr TSANG Yik-tao 曾亦韜牙科醫生 (Reg. No. D04053)

Date of hearing: 15 June 2022

Present at the hearing

Council Members: Dr LEE Kin-man, JP (Chairman)
Dr FOO Tai-chuen
Dr LEUNG Kwok-ling, Ares
Dr WAI Tak-shun, Dustin
Dr TSANG Hin-kei, Century

Legal Adviser: Mr Stanley NG

Legal representative for the Defendant: Mr Chris HOWSE, Messrs Howse Williams,
Solicitors

Legal Officer representing the Secretary: Miss Sanyi SHUM, Senior Government Counsel

The Charges

1. The charges against the Defendant, Dr TSANG Yik-tao, are as follows:-

“In or about November 2017 to September 2020, you, being a registered dentist, disregarded your professional responsibility to adequately treat and care for your patient, [REDACTED] (“the Patient”), or otherwise neglected your professional duties to the Patient in that, you -

- (i) failed to perform appropriate preoperative assessments prior to the orthodontic treatment for the Patient using clear aligners (ad modum Invisalign);
- (ii) failed to diagnose for the unerupted supernumerary tooth in the Patient’s upper maxillary anterior region, before embarking on the orthodontic treatment;

- (iii) failed to provide treatment options for the unerupted supernumerary tooth in the Patient's upper maxillary anterior region, before embarking on the orthodontic treatment;
- (iv) failed to inform or sufficiently inform the Patient of the treatment progress of the orthodontic treatment when fixed braces were applied;
- (v) failed to make timely referral to relevant specialist(s) when the orthodontic treatment did not progress as planned; and/or
- (vi) failed to keep true and/or contemporaneous treatment records of the Patient;

and that in relation to the facts alleged you have been guilty of unprofessional conduct.”

Burden and Standard of Proof

2. The Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. The Council also bears in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.

Unprofessional Conduct

3. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 (“DRO”), “unprofessional conduct” means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

Facts

4. The name of the Defendant has been included in the General Register (“GR”) since 31 July 2013. His name has never been included in the Specialist Register.
5. On 28 November 2017, the Patient consulted the Defendant, requesting for orthodontic treatment for her malaligned teeth. The problems of crowding, upper midline shift to the right, and lip protrusion were identified. The initial treatment plan suggested by the Defendant was orthodontic treatment with extraction of teeth 24, 34 and 44 and using clear aligners (Invisalign). The Patient accepted the treatment plan.
6. On 20 December 2017, orthodontic records were taken and sent to Invisalign. On the same date, the consent for Invisalign treatment was signed by the Patient.
7. On 21 December 2017, two radiographs (i.e. orthopantomogram (“OPG”) and lateral cephalogram) were taken.

8. On 13 February 2018, the Defendant sent to the Patient via email the clincheck video with a new treatment plan. The Defendant called the Patient and said the new treatment plan was non-extraction with interproximal reduction. The Patient accepted the new plan.
9. Clear aligners treatment started on 28 February 2018 with 45 sets of aligners. The first phase of 45 sets of aligners finished on 17 April 2019. Intra-oral scanning of the dentition was done, and photos were taken for refinement treatment.
10. On 29 May 2019, refinement stage aligners were given to the Patient. A new OPG radiograph was taken. The Defendant told the Patient that extraction of lower right wisdom tooth was required to provide space for refinement treatment.
11. On 22 June 2019, the lower left and right wisdom teeth were extracted. Then a refinement treatment with clear aligners continued.
12. The Patient attended to six review appointments from 22 June 2019 to 13 March 2020. According to the Patient, the Defendant told her that the progress was good. However, she noticed that the clear aligners were not fitting well, and she expressed her concern to the Defendant.
13. On 13 March 2020, the Patient asked the Defendant whether she could switch to fixed appliances treatment (i.e. fixed braces). The Defendant told her that three more months were required to finish the case if she switched to fixed braces.
14. On 15 March 2020, the Patient contacted the Defendant's clinic via Whatsapp, informing the staff that she decided to switch to fixed braces. She also asked whether updated radiograph and dental models were required. The staff replied to her that according to the Defendant none was needed.
15. On 29 March 2020, fixed braces were fitted. The Patient noticed that her tooth alignment and occlusion were getting worse progressively, and her right upper incisors, premolars were bulging outward. The Patient expressed her concerns to the Defendant. The Defendant replied to her that it was just a problem of the bite and it would get better when the bite was corrected.
16. On subsequent appointments, the Defendant told the Patient that the clear aligners treatment had caused some root problems in the lower teeth, and that was why the Defendant suggested to switch to fixed braces. The Patient attended the last adjustment appointment on 27 September 2020.
17. The Patient sought a second opinion from a Dr YEUNG, an orthodontist. According to the Patient, Dr YEUNG told her that there was a supernumerary tooth located in the maxillary incisor region from the pre-treatment radiographs taken on 21 December 2017. Dr YEUNG told her that the presence of the supernumerary tooth would cause the upper teeth to bulge out and the resorption of the incisors' roots, and the supernumerary tooth should be extracted prior to the orthodontic treatment. A Cone Beam Computed Tomography was taken. Root resorption of the upper central incisor was identified, and the roots of the upper right premolars were outside the cortical bone. The prognosis of the upper central incisor was compromised.
18. On 16 October 2020, the Patient contacted the Defendant's clinic and requested for all her dental records. On 3 November 2020, the records were provided to the Patient.

19. On 18 December 2020, the Patient lodged a complaint with this Council against the Defendant.

Findings of the Council

20. The Defendant admitted the factual particulars of all the charges against him. However, it remains for us to consider and determine whether in respect of each of the charges the Defendant was guilty of unprofessional conduct.

Charge (i)

21. Pre-operative assessments would usually include detailed history taking, clinical examination, obtaining radiographic findings, and particularly important in the context of orthodontic treatment, the taking of models to assess and determine the treatment goals. In this case, the record shows that these assessments had been done save for periodontal charting. Two radiographs (OPG and lateral cephalogram) were taken on 21 December 2017.
22. At the inquiry, the pre-treatment radiograph OPG taken on 21 December 2017 was shown to us. There was a distinct radiopaque mass located at the middle-to-apical thirds region of teeth 11 and 12. The radiographic appearance was suggestive of an unerupted supernumerary tooth. A reasonable dentist would have been expected to recognize the abnormality and arrange suitable investigation.
23. In view that there existed a radiopaque mass suggestive of an unerupted supernumerary tooth, this case warranted further investigation by means of additional radiographs, which was the appropriate preoperative assessment for the Patient, to confirm the exact location of a possible unerupted supernumerary tooth. The presence of an unerupted supernumerary tooth would be both an obstacle as well as a risk to the orthodontic treatment. However, additional radiographs were never considered by the Defendant.
24. We find that the Defendant had failed to perform appropriate pre-operative assessment prior to the orthodontic treatment for the Patient using clear aligners.
25. We are satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
26. We therefore find the Defendant guilty of charge (i).

Charge (ii)

27. Despite what the Defendant wrote in his clinical record that he had on 2 February 2018 discussed with the Patient about the removal of the unerupted supernumerary tooth, the Patient told us that the Defendant had never throughout the whole treatment period informed her of the existence of a supernumerary tooth.
28. If the Defendant was really aware of the presence of the unerupted supernumerary tooth, it is reasonable to expect that he should have taken further radiographs. The possible management was either to extract the supernumerary tooth or to accept its presence and to

continually monitor it during the orthodontic treatment. However, there was no record showing that the Defendant had ever monitored it. This only shows that he was not aware of the unerupted supernumerary tooth.

29. The Defendant's record on 2 February 2018 contained no details as to what was discussed about the removal of the supernumerary tooth. We do not believe that there was any such discussion.
30. Further, as said above, the presence of an unerupted supernumerary tooth was both an obstacle as well as a risk to orthodontic treatment. Such an obstacle as well as risk should be clearly explained to the Patient for the purpose of seeking informed consent. However, from the written consent form signed by the Patient on 20 December 2017, there was no mentioning at all of the presence of the unerupted supernumerary tooth, not to mention any discussion about it to the whole treatment.
31. We find that the Defendant had failed to diagnose the unerupted supernumerary tooth before embarking on the orthodontic treatment.
32. We are satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
33. We therefore find the Defendant guilty of charge (ii).

Charge (iii)

34. We already find under charge (ii) above that the Defendant had failed to diagnose the unerupted supernumerary tooth. Without such diagnosis, it follows that there could not be any treatment options for the unerupted supernumerary tooth.
35. We find that the Defendant had failed to provide treatment options for the unerupted supernumerary tooth before embarking on the orthodontic treatment.
36. We are satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
37. We therefore find the Defendant guilty of charge (iii).

Charge (iv)

38. Treatment progress in orthodontics includes tooth movement (i.e. whether the teeth have moved to the desired position) and the associated changes of dental and related tissues.
39. When fixed braces were applied on 29 March 2020, the Defendant should have at least explained to the Patient about the progress of tooth movement and the control of root torque as previously planned. However, there was no such record.
40. There was also no record that the Defendant had explained to the Patient about the updated risk of the presence of the unerupted supernumerary tooth. This further supports our finding above that the Defendant had failed to diagnose the unerupted supernumerary tooth.

41. We are satisfied that the Defendant had failed to inform or sufficiently inform the Patient of the treatment progress when fixed braces were applied.
42. We are satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
43. We therefore find the Defendant guilty of charge (iv).

Charge (v)

44. The Patient switched to fixed braces on 29 March 2020.
45. It was only 6 months in between from the time when the Patient switched to fixed braces until the time when she sought treatment elsewhere. During these 6 months, the orthodontic treatment by fixed braces was still ongoing under the continuous care of the Defendant.
46. The Patient had already sought treatment elsewhere. It was impossible for the Defendant to make any referral to specialist. In any event, we do not think there was any undue delay for not referring to specialist during this 6 months' period.
47. We therefore acquit the Defendant of charge (v).

Charge (vi)

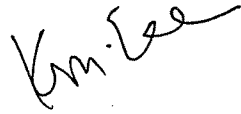
48. The Defendant's record was a text record. It was not the usual kind of handwritten record or record generated from clinical software.
49. The truthfulness of a treatment record is of paramount importance to the well-being of the patient and to the public confidence in the dental profession. Any deliberate action to insert false information in the treatment record bears serious consequences.
50. As stated above, we do not believe that there was any discussion of the removal of the supernumerary tooth on 2 February 2018. We do not believe the record that there was such discussion was true.
51. Further, according to the Defendant's Orthodontic Treatment Report: Pretreatment dated 20 December 2017, the Defendant stated that the OPG and lateral cephalogram radiographs were taken on 20 December 2017 and he also stated what he saw from the radiographs.
52. However, from the copy of the OPG and lateral cephalogram radiographs provided by the Patient, the date printed on them was clearly 21 December 2017.
53. It was logically impossible that the Defendant could have viewed the radiographs on 20 December 2017 when in fact they were not even taken.
54. In any event, the Defendant admitted that he had failed to keep true and/or contemporaneous records.

55. We find that the Defendant had failed to keep true and/or contemporaneous treatment records of the Patient.
56. We are satisfied that the conduct of the Defendant had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
57. We therefore find the Defendant guilty of charge (vi).

Sentencing

58. The Defendant has no previous disciplinary record.
59. We give credit to the Defendant's admission and full cooperation throughout these proceedings.
60. The Council bears in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and maintain public confidence in the dental profession.
61. Charges (i) to (iv) largely relate to the assessment and diagnosis of the unerupted supernumerary tooth. Although we believe that the failure to assess and diagnose was not deliberate, it was nonetheless a serious omission. The Defendant was not aware of this omission for over a long period of time during the entire course of orthodontic treatment, from the first set of clear aligners, through the refinement aligners, to the subsequent switching to fixed braces. In our view, the omission to assess and diagnose was an elemental and grievous failure.
62. Charge (vi) involves the integrity of the Defendant of providing a true and/or contemporaneous treatment record. The whole case was all about the Defendant's inability to assess and diagnose the unerupted supernumerary tooth and his management to the orthodontic treatment. This fact was however never truthfully recorded in his treatment record, but rather there was untrue record that he had discussed with the Patient about the unerupted supernumerary tooth, and he was aware of the unerupted supernumerary tooth. We take a very serious view of this untruthfulness, which seriously undermines the public confidence in the dental profession.
63. We have taken note that the Defendant has taken a number of courses over the years on record keeping. However, the taking of courses will not lessen his culpability in providing untrue treatment record in this case.
64. Having regard to the gravity of the case and the mitigation submitted by the Defendant, the Council makes the following orders:-
 - (a) In respect of charges (i) to (iv), that the name of the Defendant be removed from the General Register for a period of three months;
 - (b) In respect of charge (vi), that the name of the Defendant be removed from the General Register for a period of three months;
 - (c) The orders in paragraphs (a) and (b) above shall be concurrent; and
 - (d) The orders in paragraphs (a) to (c) above shall be published in the Gazette.

65. In view of the seriousness and gravity of each and every of the charges (i) to (iv) and (vi), a suspended sentence is not appropriate.

A handwritten signature in black ink, appearing to read 'Kin-man Lee', written in a cursive style.

Dr LEE Kin-man, JP
Chairman
The Dental Council of Hong Kong